

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, November 8, 2012
REGULAR MEETING
6:30 p.m.

I. **CALL TO ORDER** – The meeting was called to order at 6:30 p.m.

II. **PLEDGE OF ALLEGIANCE** – Commissioner Ameri

III. **ROLL CALL**

PRESENT: Ameri, Brown, Hillgren, Kramer, Myers, Toerge, Tucker

Staff Present: Kimberly Brandt, Community Development Director; Brenda Wisneski, Community Development Deputy Director; Leonie Mulvihill, Assistant City Attorney; Tony Brine, City Traffic Engineer; Fern Nueno, Associate Planner; Kay Sims, Assistant Planner; Javier S. Garcia, Senior Planner

IV. **PUBLIC COMMENTS**

Chair Toerge invited those interested in addressing the Commission on items not on the agenda, to do so at this time.

Jim Mosher commented on the Commission's power to do the people's work given to the Commission by the City Charter. He noted a recent approval of the City Charter and highlighted changes made. He noted that the Commission will no longer be required to make recommendations regarding Public Works projects for rebuilding of blighted areas in the City, to meet once per month or select a new Chair every year. He also addressed changes to the duties of the City Manager affecting the Commission.

There were no others wishing to address the Commission and Chair Toerge closed the Public Comments portion of the meeting.

V. **REQUEST FOR CONTINUANCES** - None

VI. **CONSENT ITEMS**

ITEM NO. 1 MINUTES OF OCTOBER 4, 2012

Recommended Action: Approve and file

Chair Toerge noted corrections to the minutes.

Interested parties were invited to address the Commission on this item. There was no response and public comments were closed.

Motion made by Vice Chair Hillgren and seconded by Commissioner Ameri, and carried 7 – 0, to approve the minutes of the Planning Commission meeting of October 4, 2012, Regular meeting, as amended.

AYES: Ameri, Brown, Hillgren, Kramer, Myers, Toerge and Tucker
NOES: None
ABSTENTIONS: None
ABSENT (Excused): None

VII. PUBLIC HEARING ITEMS

ITEM NO. 2 Lugonia Setback Determination (PA2012-119) Site Location: 431 Lugonia Street

Associate Planner Fern Nueno presented details of the report addressing location, zoning, details of the proposal, required setbacks, compatibility and consistency of setbacks with other lots in the vicinity including FAR, Floor Area limits, and setbacks areas. She noted that the proposed setbacks would make the site consistent with other lots in the area and neighboring properties. Ms. Nueno presented recommendations and options available to the Commission.

In response to an inquiry from Vice Chair Hillgren, Ms. Nueno explained the concept of "open volume" noting that it is based on 15% of the buildable area.

Commissioner Tucker inquired about the staff recommendation of four-foot side and rear setbacks and Ms. Nueno noted the intent of being consistent with the Code requirements. She explained that the width of the lot determines the side setbacks, but that three feet would be consistent with the required side setbacks on the adjacent lots. Ms. Nueno reported that no one contacted her in support or opposition of the item.

Discussion followed regarding other lots eligible for a setback determination, setting precedents, and what they might mean to the community.

Community Development Director Brandt added that each application is evaluated on its own merit and recognized that end lots are highly unusual.

The applicant was invited to address the Commission.

Eric Aust, Project Architect, asked that the Commission review a letter regarding a request for three-foot side and rear setbacks allowing the owners a similar buildable area and floor area ratio as other lots in Newport Shores. He noted that three-foot setbacks are standard in Newport Shores and would allow a home to be constructed comparable to other lots in the neighborhood.

Interested parties were invited to address the Commission on this item.

Jeff Wilson inquired regarding existing conditions in relation to the current setbacks.

Ms. Nueno reported that in relation to the side and rear property lines, the existing house is built at three feet from the side property line adjacent to the Prospect Street property and four-and-a-half feet from the property line adjacent to the Lugonia Street property.

There being no others wishing to address the Commission, Chair Toerge closed the Public Hearing.

Motion made by Commissioner Kramer and seconded by Commissioner Brown, to adopt Resolution No. 1895 approving Staff Approval No. SA2012-015.

Substitute Motion made by Commissioner Tucker to allow three-foot setbacks rather than four-foot setbacks. The substitute motion failed for lack of a second.

Commissioner Kramer agreed to amend the original motion to allow three-foot setbacks rather than four-foot setbacks. Commissioner Brown agreed with the proposed amendment.

The amended motion carried 7 – 0 as follows.

AYES: Ameri, Brown, Hillgren, Kramer, Myers, Toerge and Tucker
NOES: None
ABSTENTIONS: None
ABSENT (Excused): None

ITEM NO. 3 Chizhik Variance (PA2012-113)
Site Location: 20361 SW Cypress Street

Assistant Planner Kay Sims presented details of the report addressing location, zoning, surrounding property setbacks, location of the business park district, existing conditions, adjacent structures, previous permits issued and non-permitted elements. She presented recommendations including conditions of approval, site plan, setbacks, grading, existing wall, hedges and lattice.

Discussion followed regarding trimming hedges to the height of the wall within the front setback and location of the equestrian trail.

Ms. Brandt reported that the first five feet of the twenty-foot setback is part of the traffic safety area and must be lowered to 30 inches in order to comply with the Code.

Ms. Sims addressed the location of the hedges, accessory structures on the adjacent properties, setbacks along the southerly side, height of the lattice and the maximum height of the hedge. She presented views from the second-floor balcony, findings and recommendations.

In response to Commissioner Tucker's inquiry, Ms. Sims addressed the permitted height of the block wall, lattice and hedges and determination by the applicant to increase the heights of the block wall, lattice and hedges.

Community Development Director Brandt reported that hedges are commonly planted along property lines and that the Code limits the heights of hedges within the five-foot side yard areas and front setback. She addressed the normal course of Code Enforcement if hedges are allowed to grow beyond the permitted heights and presented options available.

Discussion followed regarding the rationale for recommending the variances and variances running with the land.

Vice Chair Hillgren questioned if this is a compliance issue with the adjacent properties.

Commissioner Myers referenced letters received by nearby residents and the issue of added fills.

Ms. Sims indicated that the grade was lowered at the time of construction and was unsure regarding the basis of the letters.

Discussion followed regarding the status of the property to the south and the uses.

Commissioner Ameri addressed the issue of privacy and inquired about the possibility of placing a condition pending the future use of the adjacent property.

In response to an inquiry from Chair Toerge, Ms. Brandt reported that generally variances are not conditional upon changing circumstances.

Commissioner Brown reported visiting the site noting that nearby properties have walls that seem to exceed six feet.

Ms. Sims reported that there was one modification permit granted to a property across the street that was allowed up to eight feet and that others may have been granted before the annexation.

Commissioner Tucker felt that there should be a process in place to review the issue in terms of future changes in land use.

Assistant City Attorney Leonie Mulvihill reported that conditioning a variance, depending on various uses, would result in the variance findings not being supportable. She addressed the purpose of a variance and stated that to condition a variance would be problematic and difficult. She stated that she does not recommend conditioning a variance.

Commissioner Ameri noted the ability to modify the structures, if needed, in the future and inquired regarding the possibility of addressing the issue as a Conditional Use Permit rather than a variance.

Commissioner Myers commented on the process.

Chair Toerge invited the applicant to address the Commission.

Masha Chizhik, representing the Applicants, referenced documentation negating the use of fill on the property. She provided a PowerPoint presentation explaining the rationale for modifying the wall and lattice during construction as opposed to requesting a variance initially. She addressed the original wall, the need to build up because of safety issues as well as privacy, views, location of neighboring structures in the side setbacks, and horse trail. Ms. Chizhik reported that when her family moved into the home, the adjacent structures were already there. She asked for privacy from views, smells and sounds from adjacent properties.

Gennady Chizhik, property owner, indicated that he does not want to create problems but is only asking for their privacy. He referenced documents regarding grade certification and noted that dirt was removed, not brought into the property. He stated that his neighbors loved the wall and it was built at his sole expense. He noted that his property is well-maintained. He asked that the Commission approve the variance request.

Interested parties were invited to address the Commission on this item.

Scott Grant, adjacent neighbor, expressed concerns that the wall and lattice were built without permits and that, because he is disabled, he is unable to maintain the hedge on his side of the property. He expressed concerns regarding his privacy and wondered about future maintenance of the hedges should the property owner choose to move in the future. He agreed with keeping the block wall and lattice but indicated that he does not want to maintain the hedge.

Marina Chizhik, Applicant, agreed with cutting the hedges but opposed removing the lattice and trimming the trees to the height of the lattice.

Steve Sanders, owner of the property on the north side, reported that the property was graded and raised but that it was done by the owner previous to the Chizhik's. He expressed concerns regarding his privacy from the 35 foot height of the Chizhik home, as well as the process of not having prior notice of such a high structure allowed to be constructed on the property.

In response to an inquiry from Commissioner Tucker, Mr. Sanders reported he is not complaining about the fence.

There being no others wishing to address the Commission, Chair Toerge closed the Public Hearing.

Motion made by Commissioner Ameri and seconded by Commissioner Kramer, to adopt Resolution No. 1896 approving Variance No. VA2012-005.

Vice Chair Hillgren indicated the he will not support the matter and felt that the issue may be resolved by neighbors working together.

Commissioner Brown questioned what would occur if the variance is not approved.

Ms. Brandt reported that if the variance is not granted, the applicant could appeal the decision through Council. Once a final determination is made and the variance is not granted, the property would need to be brought into compliance with the City's Municipal Code. She noted the need to enforce the Municipal Code.

Commissioner Brown expressed concerns regarding the process relative to the variance not being requested prior to construction of the wall. He stated that he is inclined to grant the variance.

Chair Toerge indicated that he drove through the area and saw many cases where walls and hedges exceeded the height of the subject site. He stated that he will support staff's recommendation as well as the motion.

In response to an inquiry from Commissioner Tucker, Commissioner Ameri reported that his motion supports approval of the variance as presented and proposed by staff.

Commissioner Tucker questioned whether this is the proper use for a variance and felt there is no other mechanism for handling similar requests. He opposed running the variance with the property in perpetuity.

Chair Toerge called for the question.

The motion carried 5 – 2 as follows.

AYES:	Ameri, Brown, Kramer, Toerge and Tucker
NOES:	Hillgren and Myers
ABSTENTIONS:	None
ABSENT (Excused):	None

Ms. Brandt clarified that the motion includes reduction of the height of the hedge to the existing lattice work but that staff's recommendation also included conformance with the City's Traffic Safety Area as well as bringing the height of the wall in the front setback area to forty-two inches on the south property line.

ITEM NO. 4 Emerson Island Annexation (PA2012-034)

Community Development Director Brandt presented background information including formation of LAFCO (Local Area Formation Commission) regarding incorporation of "small islands" in cities within Orange County. She addressed related State legislation and stated that the Emerson Island is one of the remaining islands between the City of Costa Mesa and the City of Newport Beach. The City was recently approached by LAFCO to complete the annexation of the property.

Associate Planner Fern Nueno presented details of the report addressing location, annexation area, Negative Declaration previously adopted, land-use designation and zoning, existing conditions, proposed General Plan Land-Use designations, proposed zoning, findings, property owner requests and recommendations. She reported that Planning Commission recommendations will be forward to Council for hearing on November 27, 2012. If approved by Council, the application will be finalized with LAFCO and if approved the annexation will be complete after fifty-days.

In response to Commissioner Tucker's inquiry, Ms. Nueno explained that there are 9 existing dwelling units and that as proposed, 10 dwelling units would be allowed in the portion of the annexation area designated Multiple Residential - 10 units maximum.

Interested parties were invited to address the Commission on this item.

Jim Mosher asked if there are more areas to be annexed in the future and felt that the maps presented are confusing as they show the annexation area to bisect several properties. He inquired about ownership of Emerson Street.

Ms. Nueno reported that the present item is the last of the "small islands" to be annexed. She noted that the private street will be part of the City of Newport Beach and will be part of the annexation.

Ms. Brandt reported that there are still unincorporated "islands" between the City of Costa Mesa and the City of Newport Beach in the general area but are within the sphere of influence within the City of Costa Mesa.

Fred Kindgren addressed ownership of the private street. He noted that there are more mixed units in the area than there are single-family and felt that the designation is appropriate.

There being no others wishing to address the Commission, Chair Toerge closed the Public Hearing.

Motion made by Chair Toerge and seconded by Commissioner Ameri, and carried 7 – 0, to adopt Resolution No. 1897 recommending City Council approval of General Plan Amendment No. GP2012-001 and Code Amendment No. CA2012-002.

Commissioner Kramer commented on the use of Google Earth or something comparable when staff presents similar cases in the future.

AYES: Ameri, Brown, Hillgren, Kramer, Myers, Toerge and Tucker
NOES: None
ABSTENTIONS: None
ABSENT (Excused): None

ITEM NO. 5 Woody's Wharf Use Permit (PA2011-055)
Site Location: 2318 Newport Boulevard

Senior Planner Javier S. Garcia presented details of the report addressing consolidation of previous conditions of approval, removal of duplicate conditions or those that no longer apply and inclusion of new conditions of approval. He addressed location, details of the requests, setbacks, parking lot, existing conditions, surrounding properties, nearest residential district, spaces for boats, approval of the original Use Permit and allowances as well as subsequent amendments and permits. Mr. Garcia addressed patron dancing, extensions of opening and closing hours, valet parking, site plan, outdoor dining area, bar, main entrance and access walkway and doors.

Mr. Garcia addressed removal of tables and chairs to allow for dancing, extension of opening and closing hours, ambient noise levels, closure of outdoor dining area and issues related to use of the patio beyond 11:00 p.m. He stated no parking issues during the day, valet parking service during night-time use and availability of municipal parking lots for additional parking during evenings. He presented details of staff recommendations as presented in the report.

Chair Toerge invited the applicant to address the Commission.

Mark Serventi, Applicant and Co-owner of the restaurant, thanked staff and the Commission and introduced others on his team. He noted that the facility is a good neighbor and has made efforts to mitigate problems in the area. Mr. Serventi addressed their request noting that they are not asking for anything new and referenced a request for amending the conditions of approval. He stated that he understands the concerns voiced by residents and listed actions to resolve some of the issues and their willingness to work with staff and residents. Mr. Serventi referenced Police reports noting there was only one complaint reported in many years of operation. He reported actions to minimize noise impacts, meetings with Code Enforcement, self-imposed curfews and the possibility of hiring a security guard to monitor the adjacent condominiums. Mr. Serventi addressed construction of a retractable roof to minimize noise and further plans to minimize noise impacts.

Chair Toerge noted that the issue of the retractable roof is not being addressed at this time.

Mr. Serventi asked for the City's help in mitigating noise impacts by allowing an enclosure and the possibility of conducting sound readings and studies.

Marty Potts, Entitlement Consultant, referenced a handout, distributed under separate cover, asking for amendments to the conditions of approval. He agreed with the need for a new operator's license permit and expressed concerns that the Code indicates that the conditions could be amended to be more restrictive and that the final decision maker is the City Manager. He requested the ability to come back to the Planning Commission instead of the City Manager on additional issues. In addition, he asked that they be allowed to remove patio chairs and tables after 10:00 p.m. Regarding a dance permit, he felt that it is not applicable in this instance and stated that the owners are accepting to prepare a security plan for the Police Department's approval. Regarding the latter, he indicated wanting to make sure that the process is consistent with the use permit conditions approved by the Commission. Mr. Potts requested the allowance for events to be conducted by outside promoters. He reported that there is a cover charge in the evenings and asked that the Commission consider the condition or modification.

Roger Jon Diamond focused on the claim by opponents of the application regarding noise being generated by the restaurant. He noted the existence of a restaurant and a bar between Woody's Wharf and the existing condominiums and stressed that the source of the noise is not Woody's Wharf. He felt that there is no evidence that Woody's is the source of the noise and stressed the need for a

mechanism to establish the truth or the falsity of the accusations. Mr. Diamond addressed the importance of supporting small businesses and asked that the Commission approve the application with the modifications that are needed to make sure that the business does not have to close at 11:00 p.m. He noted that there are residential properties to the west of Woody's that have made no complaints at all.

Interested parties were invited to address the Commission on this item.

Denver Andrews, Legal Counsel to the 28th Street Marina Association, noted a direct line of sight to the Woody's Wharf patio. He emphasized that the homeowners in the Association realize, appreciate and respect the fact that they are in a mixed-use area. Mr. Andrews noted that people purchased their homes in the neighborhood with expectations that there would be conditions placed upon adjacent businesses that would respect the rights of those residing in the neighborhood. He felt that the subject restaurant has not demonstrated respect for the nearby residential neighborhood and that the business has repeatedly violated and failed to operate in accordance with its permits, particularly with respect to the use of the outdoor patio. Mr. Andrews stated that the Association is not asking the restaurant to close, but rather that the outdoor patio be closed at 11:00 p.m. and that it be enforced. He requested that the Commission deny the application of Woody's Wharf to extend the use of the outdoor patio beyond 11:00 p.m.

Jack Gleason, Director of the 28th Street Marina Association, voiced opposition to the staff report related to clarification of condition number 3. He suggested including that all service and occupancy of the outdoor dining area cease at 11:00 p.m. daily. He indicated opposition to the dancing, referenced denial of a café dancing permit and agreed with a memo from the Police Department regarding their projection that the applicant's proposal will result in an increase in police-related activities and calls for police services and their recommendation to not approve the application. He asked that regulations in place be upheld. Mr. Gleason felt that bad behavior should not be rewarded.

Joe Balzar reports that he resides closest to the subject property and is not shy about complaining about noise. He stated that there is noise on the street but that it is not coming from Woody's. He suggested that the Commission seek proof as to the source of the noise and spoke in support of the application.

Brian Serra indicated that he would oppose the waiver of any of the parking spaces, commented on the noise and felt that current problems are endemic not just to Woody's, but all of the restaurants/bars in the area. He opposed the extension of operating hours.

In reply to Vice Chair Hillgren's inquiry, Mr. Serra addressed valet parking at night and noted that daytime parking is not an issue.

Kent Stoddard reported that noise from Woody's is extensive and routinely prevents him from sleeping. He stated opposition to the extension of patio hours past 11:00 p.m. and allowing dancing. He asked that the outdoor dining area shall be closed at 11:00 p.m. daily and not be used or occupied after 11:00 p.m. He distinguished between the noise from the Commonwealth restaurant and Woody's and addressed the number of calls for police services at Woody's and recommendations by the Police Department to deny the application.

Laith Ezzet asked for the opportunity to sleep and opposed allowing dancing in the facility. He addressed the use of the patio and the inability to lock the doors that go out into the patio. He reported that problems have existed even when the Commonwealth restaurant has been shut down over the years.

Dennis Halloran referenced recent actions by the Laguna Beach Planning Commission, reported experience with mixed-use areas and stated that Woody's has recently become a nightclub which is inappropriate in a mixed-use area. He agreed with the need to clearly specify use and closure of the outdoor dining area and encouraged the Commission to deny the application.

Norman Einhorn spoke in opposition to the application and noted that he has made many complaints throughout the years regarding the operation of Woody's. He stated that current laws are not being enforced and that they should not be rewarded. He asked that the Commission deny the application.

Christopher Rolfs spoke in opposition to the application and addressed noise related to Woody's Wharf. He thanked the Commission for making the neighborhood better, but felt that the situation has become worse throughout the years.

Joe Reiss expressed concerns that the owners of Woody's Wharf have operated the business while multiple violations have occurred. He spoke in opposition to the application and noted that the issue is one of quality of life. He encouraged the Commission to accept the recommendations from the Police Department and noted the high concentration of alcohol-related uses in the area. In addition, he addressed problems with parking and lack of parking and noise studies.

There being no others wishing to address the Commission, Chair Toerge closed the Public Hearing.

In response to an inquiry from Chair Toerge, Mr. Garcia reported that Woody's Wharf has always been a restaurant.

In response to Vice Chair Hillgren's inquiry, Mr. Garcia addressed the possibility of putting a roof over the patio and the prohibition of placing additional structures across the lot line, without consolidating the lots. Mr. Garcia reported that the Code does not require noise or parking studies be submitted for this type of change since it is an existing use.

Commissioner Tucker inquired regarding the possibility of a temporary lot merger to allow placement of a patio cover structure.

Ms. Brandt noted the two different Codes being considered including the State Building Code and the City's Municipal Code requirements. She addressed steps relative to certificates of compliance and the need to subdivide once conditions would change.

Commissioner Tucker noted that the noise issue is a Code Enforcement issue and did not think that it was an item to approve or not approve. He commented on the issue of dancing and the operation of the patio beyond 11:00 p.m.

Mr. Garcia addressed allowances related to the current approval.

Community Development Deputy Directory Brenda Wisneski explained that the noise issue would be a Code Enforcement issue regardless of the Planning Commission's decisions.

Commissioner Tucker referenced the Police Department recommendations and questioned why staff would find that dancing would be acceptable.

Mr. Garcia addressed limitations of the use of outdoor dining and felt that allowing dancing would allow for private parties/receptions/fundraising events and that limiting the dancing to the interior would not impact the neighbors.

Chair Toerge commented on conflicts with the previous use of the site and the lack of a noise study. He noted that the facility is approved as a restaurant but that when tables and chairs are removed and cover charges are implemented, these are not the activities of a restaurant. He stated that he would be inclined to deny the application but suggested that the applicant consider continuing the item while they try to conduct a noise study and enclosing the roof. He highlighted the proposed changes to the conditions.

Commissioner Brown agreed with Chair Toerge's comments. He asked whether dancing is permitted with the current permit and Mr. Garcia reported that it is not. Commissioner Brown felt that it is unfortunate that the noise issue cannot be mitigated with a patio cover and expressed concerns that the operation is migrating from operation of a restaurant to a night club use.

Commissioner Kramer suggested continuing the item in order to give the applicant the opportunity to prepare a better case regarding noise evidence and possible solutions with respect to a cover. He stated that he is in favor of the application and felt that he is not completely satisfied with the solutions presented at this time.

Commissioner Ameri agreed with Commissioner Kramer's comments and addressed compliance issues involved where the applicant has been in violation of what they are allowed to do. He stressed the need to comply with the Code and felt that many of the residents' concerns may not be directly related with dancing, but rather the whole structure of the operation of the facility. He agreed with continuing the item to allow the applicant to develop solutions acceptable to all sides.

Vice Chair Hillgren agreed with allowing opportunities to modify the uses in order to work with the neighbors. He addressed incompatibility with the way the property is used or has been used. He felt that a thorough review has not been conducted and stated the need for the proper studies to ensure compliance.

Motion made by Chair Toerge and seconded by Vice Chair Hillgren, to adopt Resolution No. 1898 approving Conditional Use Permit No. UP2011-010 to allow changes to the operation of the restaurant that includes: extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m.; the use of the valet parking on an as-needed basis; a waiver for a portion of the required parking; but denying the introduction of patron dancing; denying the removal of tables and chairs within the outdoor dining area; and denying the extension of the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.

Chair Toerge invited the applicant to address the Commission.

Mr. Serventi reported that, per City Code, a dance permit is not required when an admission fee is charged and that is why dancing has occurred. He noted his willingness to work with staff and residents to supply the necessary noise and parking studies to generate mutually-agreeable solutions, and asked for a continuance.

Chair Toerge closed the Public Hearing.

Commissioner Brown questioned how the issues of noncompliance be addressed currently if the item is continued.

Chair Toerge noted that noncompliance with current approvals and conditions is a Code Enforcement issue.

Commissioner Tucker addressed the dancing issue noting that it changes the character of the facility to a night club. He stated that a continuance will not change his mind on the matter.

Substitute Motion made by Commissioner Kramer and seconded by Commissioner Ameri, to continue the item to the January 17, 2013, meeting of the Planning Commission as requested by the applicant.

Commissioner Kramer commented on the possibility of allowing the applicant to present more evidence, stated that he does not have an issue with allowing dancing and that there should be a modification of the establishment of a restaurant to a bar.

Commissioner Ameri suggested that the Association designate a person to contact staff and work with the owners to ensure that when the item returns to the Planning Commission, tangible solutions can be discussed.

Chair Toerge felt that the only way the project can move forward is with some type of enclosure and stated that he will not support the continuance.

Chair Toerge called for the question.

The substitute motion failed 3 – 4.

AYES: Ameri, Brown, and Kramer
NOES: Hillgren, Myers, Toerge and Tucker
ABSTENTIONS: None
ABSENT (Excused): None

Chair Toerge restated the original motion.

Commissioner Tucker recommended including clarification regarding all service and occupancy of the outdoor dining area shall cease after 11:00 p.m.

Discussion followed regarding modifications to the findings in order to be consistent with the motion for approval.

Chair Toerge agreed to include Commissioner Tucker's recommendation in the motion.

Vice Chair Hillgren asked whether the Chair would consider different hours of closure for Friday and Saturday evening for the outdoor patio.

Chair Toerge indicated that he would not.

Substitute Motion by Commissioner Kramer and seconded by Vice Chair Hillgren, to adopt Resolution No. 1898 approving Conditional Use Permit No. UP2011-010 to allow changes to the operation of the restaurant that includes: extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m.; the use of the valet parking on an as-needed basis; a waiver for a portion of the required parking; but denying the introduction of patron dancing; denying the removal of tables and chairs within the outdoor dining area; and denying the extension of the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m., clarifying that all service and occupancy of the outdoor dining area shall cease after 11:00 p.m. except on Friday and Saturday nights which would be extended to 12:00 midnight.

Assistant City Attorney Mulvihill requested clarification from Vice Chair Hillgren.

Commissioner Tucker seconded Chair Toerge's original motion to include clarification regarding all service and occupancy of the outdoor dining area ceasing after 11:00 p.m.

Commissioner Myers clarified that dancing will not be allowed. He felt that by eliminating dancing, the nature of the business is being changed and indicated support of staff's original recommendation. He suggested looking at the original recommendation with limits on the use and operation of the outdoor dining patio.

Commissioner Ameri reiterated his support for continuance and expressed hesitancy in taking away something that is already occurring at the establishment.

Substitute Substitute Motion by Commissioner Ameri to approve staff recommendations as presented without further recommendations. The Substitute Substitute Motion died for lack of a second.

Commissioner Tucker noted that dancing is not permitted currently and has not been "grandfathered".

Motion by Commissioner Myers and seconded by Commissioner Ameri, and failed 3 – 4, to reconsider continuing the item to the Planning Commission meeting of January 17, 2013.

AYES: Ameri, Myers, and Kramer
NOES: Brown, Hillgren, Toerge and Tucker
ABSTENTIONS: None
ABSENT (Excused): None

In accordance with direction from Assistant City Counsel Mulvihill, Commissioner Kramer indicated that he would maintain his substitute motion and Vice Chair Hillgren affirmed so as well.

Chair Toerge called for the question on the substitute motion.

The substitute motion carried 4 – 3.

AYES: Brown, Hillgren, Kramer and Myers
NOES: Ameri, Toerge and Tucker
ABSTENTIONS: None
ABSENT (Excused): None

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION - None

ITEM NO. 7 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Ms. Brandt reported that there is no second scheduled meeting for the month of November because of the Thanksgiving Holiday. The next regularly scheduled meeting of the Planning Commission will be on December 6, 2012, where the Uptown Village Project will be presented as well as a new development in Corona del Mar as well as a use permit. Staff anticipates that it will be a long agenda and Ms. Brandt suggested starting the meeting at 5:30 p.m. rather than 6:30 p.m. She will contact Members individually regarding the matter.

ITEM NO. 8 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT.

Commissioner Tucker hoped that the Planning Commission will soon convene in the new City Hall facility.

Ms. Brandt reported that a decision has not yet been made.

Chair Toerge announced the Mayor's Dinner on Friday, February 8, 2013.

ITEM NO. 9 REQUESTS FOR EXCUSED ABSENCES - None

IX. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 10:01 p.m.

The agenda for the Regular Meeting was posted on November 2, 2012, at 3:15 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

Michael Toerge, Chairman

Fred Ameri, Secretary